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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/489,310	01/21/2000	Gary Stephenson	7922	5677
27752                      7590                      04/13/2011 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
ROBERTS, LEZAH				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
04/13/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/489,310

**Applicant(s)**

STEPHENSON, GARY

**Examiner**

LEZAH ROBERTS

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SD-05)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

Applicants' arguments, filed January 25, 2011, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claims***

#### **Claim Rejections - 35 USC § 103 – Obviousness**

Claims 23-31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kohl et al. (USP 3,681,091).

#### **Applicant's Arguments**

Applicant argues in order for a case of obviousness to be established, three criteria must be met. First, there must be some suggestion or motivation, second, there must be a reasonable expectation of success, and finally, the prior art references must

teach or suggest all of the claim limitations. Kohl does not teach or suggest all of the claim limitations of independent claim 23. Specifically, Kohl [does not], *sic*, disclose, teach, or suggest a method of treating dental erosion comprising, inter alia, a physician or dental professional directing a human, in need thereof, to orally administer an effective amount of a beverage composition having a pH less than 5 at least once daily as recited by amended independent claim 23. Additionally, Applicants submit that a functional relationship does in fact exist between "been directed by a physician or dental professional" and the human actually ingesting based on such direction, as recited in amended independent claim 23. Thus, as described in the specification, direction by a physician or dental professional to ingest the beverage composition can include instruction and/or information to the user that use of the beverage composition may and/or will provide treatment against dental erosion. Such direction can be oral direction or written direction and/or packaging associated with the beverage composition. Accordingly, this direction is indeed functional as it includes information to the user that use of the beverage composition may and/or will provide treatment against dental erosion and is thus related to the method of orally administering the beverage composition as recited in independent claim 23.

Examiner's Response

Although Kohl does not specifically teach treating dental erosion with the apple juice composition, the claims also still encompass all individuals with natural teeth who drink acidic beverages everyday, such as acidic beverages of the prior art, as indicated

in the Board Decision page 7, paragraph 2. Further all individuals with natural teeth are in need of the treatment of tooth erosion. Therefore the reference meets the limitation "in need thereof".

The recitation of "a physician or dental professional directing a human" encompasses printed subject matter or instruction. This is supported by the instant specification and Applicant's remarks on page 5 of 6, the inset paragraph, which discusses the different ways a mammal may be directed or instructed to consume the compositions of the instant claims.

USPTO personnel may not disregard claim limitations comprised of printed matter. However, USPTO personnel need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate. See MPEP 2106.01. When interpreting the instant claims, the recited physician or dental professional does not necessarily direct the human to ingest the beverage for the purposes of "dental erosion". The claims encompass ingesting the beverage for any purpose to a human with dental erosion because the recitation of "a physician or dental professional directing a human, in need thereof, to orally administer an effective amount of beverage composition having a pH less than 5 at least once daily" does not limit the administering of the beverage for the sole purpose of treating dental erosion. As mentioned above, the recitation of "in need thereof" would encompass all humans with natural teeth. Therefore it does not appear the direction has a new and unobvious functional relationship between the direction and the method of treating dental erosion because it is not recited that the physician or dental professional

is directing the human to drink the recited beverage everyday for the specific purposes of treating dental erosion. In regard to step (b), the teachings of Kohl encompass those humans that drink apple juice everyday and Grunberg (disclosed previously to support that a population drinks apple juice everyday) supports that a population of humans consume juices such as apple juice everyday. Therefore Kohl meets the limitations of the instant claims, and the claims still fail to distinguish the recited beverage from a beverage which a consumer would drink everyday such as the apple juice disclosed by the reference.

Claims 23-31 are rejected.

No claims allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/  
Examiner, Art Unit 1612

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/Frederick Krass/

Supervisory Patent Examiner, Art Unit 1612